

Title	Ethics Standards for Neutral Arbitrators in Contractual Arbitration (adopt Division IV of the Appendix to the California Rules of Court)
Summary	The standards would establish minimum standards of conduct for persons nominated or appointed as a neutral arbitrator under an arbitration agreement subject to title 9 of part III of the Code of Civil Procedure or in any arbitration to be conducted in California.
Source	Administrative Office of the Courts staff
Staff	Heather Anderson, 415-865-7691, heather.anderson@jud.ca.gov
Discussion	<p><u>Background</u></p> <p>The Judicial Council's Charge</p> <p>Code of Civil Procedure Section 1281.85,¹ enacted in October 2001, requires the Judicial Council to adopt ethics standards for neutral arbitrators in contractual arbitration effective July 1, 2002. This section specifies that the standards adopted by the Judicial Council will have mandatory application to contractual arbitrators:</p> <p style="padding-left: 40px;">Beginning July 1, 2002, a person serving as a neutral arbitrator pursuant to an arbitration agreement shall comply with the ethics standards for arbitrators adopted by the Judicial Council pursuant to this section.</p> <p>This section also provides the Judicial Council with parameters concerning the scope and content of these ethics standards:</p> <p style="padding-left: 40px;">These standards shall be consistent with the standards established for arbitrators in the judicial arbitration program² and may expand but may not limit the disclosure and disqualification requirements established by this chapter.³ The standards shall address the disclosure of interests, relationships, or affiliations that may constitute conflicts of interest, including prior service as an arbitrator or other dispute resolution neutral</p>

¹ Added by 2001 Stats., ch. 362 (SB 475), § 4. All citations are to the Code of Civil Procedure unless otherwise noted.

² The judicial arbitration program is governed by Code of Civil Procedure §§ 1141.10-1141.31, and by Cal. Rule of Ct., Rules 1600-1618, adopted by the Judicial Council pursuant to section 1141.14.

³ That is, Chapter 2, Enforcement of Arbitration Agreements Code of Civil Procedure §§ 1281-1281.95. Disclosure and disqualification requirements in this chapter are set out in sections 1281.9, 1281.91, and 1281.95.

entity, disqualifications, acceptance of gifts, and establishment of future professional relationships.

Development of the Proposed Standards

These proposed Ethics Standards for Neutral Arbitrators in Contractual Arbitration were prepared by Judicial Council staff with the assistance of a 19-member Blue Ribbon Panel of Experts on Arbitrator Ethics appointed by Chief Justice Ronald M. George. The panel includes law school faculty, sitting and retired judges, legislative and executive branch representatives, business, consumer, and labor representatives, and practicing arbitrators (a roster of the Panel of Experts is attached). This panel considered and commented on two prior drafts of these standards prepared by staff.

To guide the drafting of these standards, staff looked to a number of sources including:

- *The Scope of the Judicial Council's Authority Under the Statute* – Section 1281.85 itself sets the outer parameter on what can and must be addressed in these ethics standards.
- *The Application of the Standards* - Because the standards are mandatory, they could be the basis for a finding of misconduct by an arbitrator. Staff therefore drafted provisions that focus on the minimum standards of ethical conduct – what an arbitrator must do in order to uphold the integrity and fairness of the arbitration process – rather than more aspirational goals – what an arbitrator could do to better his or her practice.
- *Existing Statutes Regarding Contractual Arbitration* – Section 1281.85 is set within an existing statutory structure that already delineates many aspects of arbitrator conduct in contractual

⁴ The ABA/AAA standards have been adopted by many other entities and jurisdictions for their arbitrators, including: Santa Barbara Superior Court, Court Administered Dispute Resolution, Code of Ethics for CADRe Arbitrators; N. C. Ethics Arb., Canons 1-7 (2001); S.C. Family Court Rules, App. A, Canons I-VI (2001). Jurisdictions incorporating by reference include: Fl. Stat. § 681.1096(3)(i) (2000); Ha. Rules of Ct., Rule 10(D) (2000); 201 Code of Mass. Reg. 11.09(4), 14.06(6) (2001); 1 Tex. Admin. Code § 163.13(b) (2001); U.S. Dist. Ct., S.D. Tex., Rule 16.4.J (2001). Institutions adopting or incorporating the AAA/ABA Code include: Rules for Kaiser Permanente Member Arbitrations, Rule A.4; National Association of Securities Dealers (NASD), Arbitrator's Manual, Appendix A; California Dispute Resolution Institute, Dispute Resolution Principles, § II.D].

arbitrations, including hearing procedures, disclosure requirements, and grounds for disqualification and vacatur.

- *Existing Provisions Relating to Judicial Arbitration* – As noted above, section 1281.85 requires that these ethics standards for contractual arbitrators be consistent with the ethics standards for arbitrators in the judicial arbitration program, which are set out in Code of Civil Procedure section 1141.18(d), California Rules of Court, Rule 1606, and canon 6D of the California Code of Judicial Ethics.
- *Existing Voluntary Ethics Standard for Arbitrators* – Many voluntary professional associations and ADR provider organizations have ethics standards for their affiliated arbitrators, including the American Arbitration Association and American Bar Association Code of Ethics for Arbitrators in Commercial Disputes.⁴
- *The Policy Goal* – Staff’s fundamental objective in preparing these standards has been to further, as effectively as is possible within the limits set by the law, the underlying policy goal these standards are intended to serve: ensuring the integrity and fairness of contractual arbitration proceedings in California and, thereby strengthening public confidence in the arbitration process.

Invitation to Comment and Public Forums

By way of this invitation to comment we are seeking the input of all those who are interested on both the attached standards and any accompanying comments. We would appreciate your sending a copy of this invitation to any other person or entity that you believe would be interested in these standards. You may also direct interested parties to these materials on the Judicial Council website, www.courtinfo.ca.gov, under the “Invitations to Comment” link.

In addition, we will be holding public forums on the standards on February 7, from noon to 6 p.m. in Los Angeles at the Sheraton Gateway Hotel at LAX, 6101 West Century Blvd., and on Feb. 8, from noon to 6 p.m. at the Judicial Council Conference Center, 455 Golden Gate Avenue, Third Floor, in San Francisco. To reserve a time to speak at either public forum, please contact Tracy Tognetti, 415/865-7964; e-mail: tracy.tognetti@jud.ca.gov

Summary of Proposed Standards and Matters on Which Input Is Particularly Sought

Below is a summary of each of the proposed standards and any accompanying comments. Also identified below are specific substantive issues on which your input is particularly sought.

Standard 1. Purpose, Intent, and Construction

This standard would articulate the overall purpose and intent of the proposed standards as establishing the minimum standards of conduct for neutral arbitrators, guiding the conduct of arbitrators, informing and protecting participants, and promoting public confidence in the arbitration process. The proposed comment to the standard explains the relationship of these standards to the statutory grounds for vacatur of an arbitration award.

Standard 2. Definitions

This standard would define words and phrases that have special meanings or are repeatedly used in the standards, including “consumer arbitration,” “dispute resolution provider organization,” and “impartiality.” Of particular note is the proposed definition of “arbitrator” and “neutral arbitrator” in subdivision (a) which would include any arbitrator who is to serve impartially. This definition expands upon the definition of “neutral arbitrator” in Code of Civil Procedure section 1280(d), which does not include arbitrators appointed by a dispute resolution provider organization or by any party acting alone, even if those arbitrators are to serve impartially. Also of note are the proposed definitions of “lawyer in the arbitration,” which is limited to the lawyer actually participating in the arbitration, and “lawyer for a party” which includes other lawyers currently associated in the practice of law with the lawyer actually representing a party.

Standard 3. Application

This standard would provide that these standards generally apply to all arbitrators nominated or appointed to serve under an arbitration agreement subject to title 9 of part 3 of the Code of Civil Procedure (commencing with section 1280), and in any arbitration that is to be conducted in California. Please note that, given the definition of

“arbitrator,” these standards would apply to all arbitrators who are to serve impartially, even arbitrators appointed by one party unilaterally. This standard would also specifically provide that the standards are not applicable to international, judicial, or attorney-client fee arbitrations, or to arbitrations conducted under or arising out of a collective bargaining agreement.

Standard 4. Duration of Duty

This standard would require that, except as otherwise provided, arbitrators comply with these standards from acceptance of appointment until the conclusion of the arbitration.

Standard 5. General Duty

This standard would provide that the arbitrators’ overarching ethical duty is to act in a manner that upholds the integrity and fairness of the arbitration process and to maintain impartiality toward all participants at all times. The proposed comment to the standard notes that, as part of maintaining impartiality, an arbitrator should avoid entering into any relationship or acquiring any interest that might reasonably create the appearance of partiality or bias.

Standard 6. Duty to Refuse Appointment

This standard would create an affirmative duty to decline appointment that does not exist under current law. It would provide that a proposed arbitrator must decline appointment, notwithstanding the parties’ request, consent or waiver, if he or she cannot be impartial or is not fully satisfied either that he or she is physically and mentally able to serve or that he or she can devote the time and attention necessary to commence and complete the arbitration in a timely manner. These provisions are derived from and extend the obligations under Code of Civil Procedure section 1281.9(a)(1), which requires an arbitrator to disclose the existence of any ground specified in section 170.1 for disqualification of a judge. Section 170.1(a)(6) provides that a judge is disqualified if the judge believes his or her recusal would further the interests of justice or believes there is a substantial doubt as to his or her capacity to be impartial. Section 170.1(a)(7) provides that a judge is disqualified if by reason of permanent or temporary physical impairment, the judge is unable to properly perceive the evidence or is unable to properly conduct the proceeding.

Your comments are particularly requested concerning the following issues:

1. Instead of being required to decline appointment as currently provided in this standard, should a proposed arbitrator be permitted to accept appointment if the parties give their consent after the arbitrator discloses the physical or mental limitations that would interfere with his or her ability to serve, or the reasons he or she might be unable to commence and conclude the arbitration in a timely manner? There were divergent views concerning this issue on the panel of experts. Some members suggested that the parties' freedom to select the arbitrator of their choosing should be paramount and, thus, that an arbitrator should not be obligated to decline appointment if the parties still want that arbitrator after being informed about the arbitrator's limitations. Others believed that the duty to protect the integrity of the arbitration process should be paramount and that an arbitrator should have the duty, independent of the desires of the parties, to decline appointment if he or she does not believe he or she can handle the case appropriately.
2. If a proposed arbitrator wishes to decline appointment, should he or she be required to do so writing?

Standard 7. Disclosure

This standard would identify the general categories and specific types of matters that must be disclosed to parties by a person nominated as an arbitrator and would specify the timeframe within which those disclosures would have to be made.

In large part, this standard consolidates and integrates the disclosure provisions already applicable to contractual arbitrators under existing law, including those in Code of Civil Procedure section 1281.9 and in section 170.1, the requirements of which are incorporated by reference under section 1281.9. This standard is also drafted to achieve consistency with the disclosure requirements for judicial arbitrators in rule 1606 and Canon 6D of the Code of Judicial Ethics. As discussed in more detail below, in some respects, however, standard 7 invokes the Judicial Council's authority under section 1281.85 to expand existing disclosure requirements. The proposed comment to this

standard includes a list of the respects in which the standard would expand existing disclosure requirements. *Your input is particularly requested regarding whether this list should be included in the comment.*

Subdivision (b)

The introductory language of subdivision (b) would establish arbitrators' general duty to disclose any matters that may cause a person aware of the facts to reasonably entertain a doubt that the proposed arbitrator will be able to be impartial. This requirement is taken almost verbatim from section 1281.9(a), and is substantively identical to section 170.1(a)(6)(C), which provides that a judge is disqualified if for any reason a person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial.

Subdivision (b) expands upon the existing statutory disclosure obligations, however, by requiring that arbitrators make a reasonable effort to inform themselves of *any* matters that could cause a person aware of the facts to reasonably entertain a doubt that the proposed arbitrator would be able to be impartial. Existing law expressly provides for a duty of reasonable inquiry only with respect to financial interests, pursuant to section 170.1(a)(3). This expansion of the duty of inquiry is consistent with the obligation of arbitrators in the judicial arbitration program, under Rule 1606(a), to determine whether any cause exists for disqualification upon any of the grounds set forth in section 170.1.

Paragraphs (1) through (8) of subdivision (b) enumerate categories of interests, relationships or other matters included within the arbitrator's general disclosure obligation, and each subparagraph identifies specific types of matters in that category that must be disclosed. Under current statutes, arbitrators must already disclose most of these categories and specific types of matters. Both the existing disclosure obligations and any proposed expansions of these obligations are identified below.

Paragraph (b)(1)

This provision would require arbitrators to disclose significant personal relationships or affiliations between the arbitrator or a member of the arbitrator's family and any party or lawyer in the

arbitration. It encompasses existing disclosure requirements under Code of Civil Procedure sections 1281.9(a)(6) and 170.1(a)(4) and (5), and is consistent with rule 1606(b)(2), applicable to arbitrators in the judicial arbitration program. However, this provision would also expand these disclosure obligations in several ways, including:

- adding domestic partners to the family members about whom the arbitrator must make disclosures; and
- adding a specific obligation to disclose not only familial relationships, but also close personal friendships with a party or attorney in the arbitration.

Paragraph (b)(2)

This provision would require disclosure of information concerning past, present, or currently expected service as a dispute resolution neutral for a party or a lawyer for a party. It encompasses existing requirements regarding disclosure of prior service as an arbitrator under Code of Civil Procedure sections 1281.9(a)(3) and (4). However, this provision would also expand these disclosure obligations in several respects, including:

- requiring arbitrators to disclose prior service as a dispute resolution neutral other than an arbitrator, including as a temporary judge, referee, or mediator (subparagraph (b)(2)(B)). This extension is consistent with section 1281.85's requirement that the standards address the disclosure of prior service as an arbitrator *or other dispute resolution neutral*. It is also consistent with rule 1606(b)(2), applicable to arbitrators in the judicial arbitration program, which requires disclosure of prior service as a mediator or other dispute resolution neutral. To address concerns about whether arbitrators have the records necessary to comply with this new requirement, arbitrators would be deemed to have complied with this requirement with respect to service in proceedings commenced before the effective date of the standards if they make a good-faith effort to obtain the information and disclose all the information they have.
- requiring arbitrators to disclose information concerning prior matters in which they were selected as a neutral arbitrator by a party-appointed arbitrator in the current case (subparagraph

(b)(2)(A)(iii)).

- requiring arbitrators to provide not only a list of prior cases in which they served, as required by section 1281.9, but also a summary sheet giving a total of these cases and, in those cases in which a decision was rendered, their outcomes (subparagraphs (b)(2)(A) and (B)). This is intended to make disclosed information easier for parties to absorb and to understand.

Paragraph (b)(3)

This provision would require arbitrators to disclose any past, present, or currently expected attorney-client relationship between the arbitrator and a party or lawyer for a party. This paragraph reiterates existing disclosure requirements under Code of Civil Procedure sections 1281.9(a)(5) and 170.1(a)(2) and (5), and is consistent with rule 1606(b)(2), which applies to judicial arbitrators.

Paragraph (b)(4)

This provision would require arbitrators to disclose other past, present, or currently expected professional or financial relationships or affiliations between the arbitrator or a member of the arbitrator's family and any party or lawyer in the arbitration. This paragraph encompasses existing disclosure requirements under Code of Civil Procedure sections 1281.9(a)(6) and 170.1(a)(3), and is consistent with rule 1606(b)(2), which applies to judicial arbitrators. It would also add a new specific requirement that arbitrators disclose prior service by the arbitrator or a member of the arbitrator's family as an expert witness or consultant for a party or a lawyer in the arbitration. This requirement is modeled after and consistent with the required disclosures by arbitrators in the judicial arbitration program under rule 1606(b)(2).

Paragraph (b)(5)

This provision would require arbitrators to disclose any significant relationship between the arbitrator or a member of the arbitrator's family and the dispute being arbitrated. It encompasses existing disclosure obligations under Code of Civil Procedure sections 170.1(a)(1) and (3), and is consistent with rule 1606(b)(2), which applies to judicial arbitrators.

Paragraph (b)(6)

This provision would require arbitrators in “consumer arbitrations” to disclose the nature of their relationship with the dispute resolution provider organization that referred the case to the arbitrator, or that is coordinating, administering, or providing the services of the arbitrator in the case, and any significant past, present, or expected financial or professional relationship or affiliation between the provider organization and a party or lawyer in the arbitration.

This would be a new disclosure obligation. It is intended to address concerns about the impact that relationships between the provider organization and a party or law firm may have on the perceived fairness and integrity of the arbitration process. To address concerns about whether arbitrators would have access to relevant information about providers’ relationships, until January 1, 2004, arbitrators would be deemed to have complied with this requirement if they make a good-faith effort to obtain the information and disclose all the information they have.

Your comments are particularly requested about whether this requirement should be adopted.

Members of the panel of experts held very divergent views concerning this proposed requirement.

Some members believed that this requirement should not be adopted because it would not provide parties with information that would help them in selecting among available arbitrators in the particular case in which the disclosures were made. They noted that every arbitrator affiliated with a particular provider organization would make an identical disclosure with regard to that provider organization, so this disclosure would not be useful in distinguishing between these arbitrators. They also noted that in cases where a provider organization is named in the underlying arbitration agreement, the parties have no choice but to use the services of an arbitrator affiliated with that provider organization unless a court determines that the arbitration agreement is unenforceable. Furthermore, they noted that in cases where the parties choose a provider organization to administer the arbitration after an arbitrable dispute arises, the timing of these proposed disclosures is such that the parties will not receive information about the provider organization until after the provider

organization has been selected. Finally, they suggested that, if the policy goal is to impact the behavior of provider organizations, the most effective method would be to directly regulate those organizations, rather than imposing a requirement on arbitrators.

Other members of the panel of experts believed that this requirement should be adopted because it addresses, at a more systemic level, issues relating to the fairness and integrity of consumer arbitration, which is an area of great public concern. They suggested that the information compiled and disclosed under this requirement will be helpful in assessing concerns about whether the relationships between provider organizations and parties or attorneys impact the fairness and integrity of the arbitration process. Furthermore, they suggest that this information will ultimately assist consumers in determining whether to enter into contracts that contain arbitration provisions that name particular provider organizations.

Paragraph (b)(7)

This provision would require arbitrators to disclose membership in any organization that practices invidious discrimination on the basis of race, sex, religion, national origin, or sexual orientation, with certain enumerated exceptions. This would be a new disclosure obligation for contractual arbitrators, but it is consistent with the current ethical obligations of judicial arbitrators under Canon 6(D)(2)(g) of the Code of Judicial Ethics.

Paragraph (b)(8)

This is a “catch-all” provision which would require arbitrators to disclose any other matter that might cause a person aware of the facts to reasonably entertain a doubt that the arbitrator would be able to be impartial, that leads the proposed arbitrator to believe there is a substantial doubt as to his or her capacity to be impartial, or otherwise leads the arbitrator to believe that his or her disqualification will further the interests of justice. This provision encompasses existing disclosure obligations under Code of Civil Procedure section 170.1(a)(6).

Subdivision 7(d)

This subdivision would clarify that arbitrators' duty to inform themselves of and disclose matters described in subdivision (b) is a continuing obligation, remaining in force from notice of the arbitrator's proposed nomination or appointment until the conclusion of the arbitration. This obligation is intended to help effectuate arbitrators' overarching duty to maintain impartiality at all times. It is also consistent with arbitrators' existing obligation under section 1281.91(d) to "disqualify himself or herself upon the demand of any party made before the conclusion of the arbitration proceeding" based on any ground specified in section 170.1. An exception would be made for disclosures relating to relationships between a dispute resolution provider organization and a party or lawyer in the arbitration, which would only need to be addressed in the arbitrator's initial disclosure.

Subdivision 7(e)

This provision would require an arbitrator to make a disclosure to the parties if, after the initial disclosure period has passed, he or she concludes that he or she is not physically or mentally able or not otherwise competent to conduct the arbitration or to decide the matter or is unable to do so because of a disability or lack of time. This provision addresses issues of disability or unavailability that arise during the arbitration process, as distinguished from situations where these issues are evident at the time the arbitrator is nominated. The latter situations are addressed in standard 6. Because once an arbitration is underway, parties' concerns about investment of time and effort in the arbitration are heightened, this standard would require the arbitrator to make disclosure to the parties and allow the parties to decide whether to disqualify the arbitrator, rather than requiring that the arbitrator withdraw from the arbitration in all cases.

Subdivision 7(f)

This provision would lay out the timeframes within which arbitrators would be required to make their disclosures. It would clarify that matters discovered after the arbitrator's initial disclosure must be disclosed within ten calendar days after the arbitrator becomes aware of the matter. This proposed timeframe is based on the time period under section 1281.9(b) for initial disclosures.

Standard 8. Disqualification

This standard addresses the circumstances under which an arbitrator would be disqualified.

Subparagraphs (a)(1) and (2) restate the existing disqualification procedures set out in section 1281.91 for situations in which an arbitrator makes, or fails to make, initial disclosures. Subparagraphs (a)(3) and (4) are new and address disqualification based on later-made disclosures or discovered omissions. Subparagraph (a)(3) would provide that an arbitrator is disqualified when he or she makes a disclosure after the initial disclosure period, and a party serves a notice of disqualification on the basis of that disclosure within the time period specified in section 1281.91(b). Subparagraph (a)(4) would provide that an arbitrator is disqualified when a party becomes aware of a material omission or misrepresentation in previous disclosures and serves a notice of disqualification within 15 days of that discovery. The 15-day time period is modeled after the time periods of section 1281.91(a) and (b).

Paragraph (c) would establish a new affirmative duty on the part of arbitrators to disqualify themselves if at any time they conclude that they are unable to conduct the arbitration impartially. This requirement is intended to help effectuate arbitrators' duty to maintain impartiality towards all participants at all times.

Standard 9. Duty to Refuse Gift, Bequest or Favor

This standard would prohibit an arbitrator from accepting a gift, bequest or honoraria from any person or entity having an interest in the arbitration, and would require the arbitrator to discourage members of his or her immediate family or household from doing so. This obligation would apply from service of notice of appointment or appointment until two years after the conclusion of the arbitration.

Acceptance of gifts is one of the areas that section 1281.85 specifically requires be addressed in the standards adopted by the council. This would be a new obligation for contractual arbitrators, but it is consistent with the obligations that apply to judicial arbitrators under canons 6(D)(2)(d) and 6(D)(4) of the Code Judicial Ethics. This standard would slightly broaden the duty to discourage family members from accepting gifts as it now applies to judicial arbitrators to encompass not only family members who reside with the arbitrator,

but also other members of the arbitrator's "immediate family," wherever they reside.

Standard 10. Duty to Refuse Future Professional Relationship or Employment

This standard would place restrictions on arbitrators entering into both concurrent and subsequent professional relationships or employment with a party or attorney in an arbitration.

Subdivision (a) would completely prohibit arbitrators from entertaining offers or accepting employment or a professional relationship as an attorney, expert witness, or consultant for a party or attorney in the arbitration while that arbitration is pending.

Subdivision (b) would require arbitrators to make an initial disclosure at the time they are nominated or selected regarding whether they will entertain offers of employment from a party or attorney while an arbitration is pending. Parties would be authorized to disqualify an arbitrator based on such a disclosure. If an arbitrator either failed to make this required disclosure or stated in such a disclosure that he or she would not entertain such offers of employment or professional relationships, the arbitrator would be prohibited from entertaining or accepting any such offers while the arbitration was pending. If the arbitrator disclosed that he or she would entertain such offers while the arbitration was pending and the party did not disqualify the arbitrator at that time, the arbitrator would be permitted to entertain such offers, but would be required to obtain the consent of the parties in the pending arbitration prior to accepting any such offers.

Subdivision (c) would require arbitrators to obtain party consent prior to entering into any professional relationship or accepting any employment either relating to the arbitrated matter or in which information the arbitrator received in confidence during the arbitration is material.

These are new obligations for contractual arbitrators. Code of Civil Procedure section 1281.85 specifically requires that the standards adopted by the Council address the establishment of future professional relationships. This proposed standard is consistent with, but more extensive than, the standards for arbitrators in the judicial arbitration program. The standards for judicial arbitrators essentially

establish limitations similar to those in subdivision (c). They provide that a lawyer who has been a court-appointed arbitrator must not accept any representation in a related matter without the informed written consent of all parties, and that a court-appointed arbitrator who has received confidential information from a party, must not, without the informed written consent of the party, accept employment in another matter in which the confidential information is material. (California Code of Judicial Conduct, canons 6(D)(7) and (8)). More extensive restrictions are proposed in this standard because in contractual arbitration, unlike in judicial arbitration, the arbitrators are compensated by the parties that appear before them. This generates concerns about potential bias or the appearance of bias that may arise from the financial incentive to be selected again for more cases by a party or attorney appearing before the arbitrator.

Your comments are particularly requested concerning the scope of the restrictions on concurrent employment or professional relationships.

While the members of the panel of experts generally supported the restrictions on concurrent employment or professional relationships that are embodied in this proposed standard, some members believed that, to address concerns about “repeat players,” there should be additional restrictions in consumer arbitrations on acceptance of additional employment or professional relationships while an arbitration is pending.

Standard 11. Conduct of Proceeding

This standard would require arbitrators to conduct arbitrations fairly, promptly and diligently and decide all matters submitted to the arbitrator for determination. This is a new requirement for contractual arbitrators, but it is consistent with the obligations of judicial arbitrators under Canon 6D of the Code of Judicial Ethics. It is also consistent with provisions in many sets of voluntary standards of conduct for arbitrators adopted by professional associations.

Standard 12. Ex Parte Communications

This standard would prohibit an arbitrator from engaging in ex parte communications except as permitted by this standard, applicable law or the agreement of the parties. This is a new requirement for contractual arbitrators, but it is consistent with the obligations of

judicial arbitrators. The standard would permit arbitrators to engage in ex parte communications with parties concerning administrative matters and to obtain the advice of a disinterested expert. These exceptions are similar to those applicable to judicial arbitrators under Canons 6(D) and 3(B)(7) of the Code of Judicial Ethics.

Your comments are particularly requested concerning whether this standard should permit ex parte communications concerning administrative matters.

Standard 13. Confidentiality

Subdivision (a) of this standard would prohibit arbitrators from using or disclosing information they received in confidence during an arbitration for personal gain. This is a new requirement for contractual arbitrators, but it is consistent with, although somewhat narrower than, the obligations of judicial arbitrators under Code of Judicial Ethics. Canon 3(B)(11) of the Code of Judicial Ethics, which applies to judicial arbitrators under canon 6(D)(5), prohibits any disclosure or use, for any purpose unrelated to arbitral duties, or non public information acquired in the arbitration.

Subdivision (b) would prohibit an arbitrator from informing anyone of the award in advance of the time the award is given to all the parties. This is not an issue that is addressed in the standards applicable to judicial arbitrators, but this requirement is consistent with provisions in many sets of voluntary standards of conduct for arbitrators adopted by professional associations.

Standard 14. Compensation

This standard would prohibit an arbitrator from charging a fee that is in any way contingent on the outcome of the arbitration. It would also require the arbitrator to inform all parties in writing of the terms and conditions of the arbitrator's compensation before accepting appointment

This is not an issue that is addressed in the standards applicable to judicial arbitrators, since these arbitrators are not compensated by the parties. However, these requirements are consistent with provisions in many sets of voluntary standards of conduct for arbitrators adopted by

professional associations.

Standard 15. Marketing

This standard would require arbitrators to be truthful and accurate in marketing their services and prohibit them from making any representations that imply favoritism or a specific outcome. The comment to this standard makes clear that an arbitrator is responsible not only for his or her own marketing activities, but also for those carried out on his or her behalf.

This is not an issue that is addressed in the standards applicable to judicial arbitrators. However, these requirements are consistent with provisions in many sets of voluntary standards of conduct for arbitrators adopted by professional associations.

Attachments:

- (1) Proposed Ethics Standards for Neutral Arbitrators in Contractual Arbitrations
- (2) Roster of Panel of Experts on Ethical Standards for Arbitrators

Division IV of the Appendix to the California Rules of Court would be adopted, effective July 1, 2002, to read:

Division IV of the Appendix to the California Rules of Court

Ethics Standards for Neutral Arbitrators in Contractual Arbitration

Standard 1. Purpose, Intent, and Construction

- (a) These standards establish the minimum standards of conduct for neutral arbitrators. They are intended to guide the conduct of arbitrators, to inform and protect participants in arbitration, and to promote public confidence in the arbitration process.
- (b) For arbitration to be effective there must be broad public confidence in the integrity and fairness of the process. Arbitrators are responsible to the parties, the other participants, and the public for conducting themselves in accordance with these standards so as to merit that confidence.
- (c) These standards are to be construed and applied to further the purpose and intent expressed in subdivisions (a) and (b), and in conformance with all applicable law.

Comment to Standard 1

These standards are not intended to establish a ceiling on what is considered good practice in arbitration or to discourage efforts to educate arbitrators about best practices.

While the grounds for vacating an arbitration award are established by statute, not these standards, an arbitrator's violation of these standards may, under some circumstances, be grounds for vacating an award under the statute. (See Code of Civil Procedure section 1286.2.) A failure to comply with disclosure obligations, in and of itself, is a ground for disqualification of the arbitrator or vacatur of the arbitrator's award. (See Code Civ. Proc., §§ 1281.91(a), 1281.95(b), and 1286.2(a)(6)(A).) Violations of other obligations under these standards may also constitute grounds for vacating an arbitration award under section 1286.2(a)(3) or (a)(5) if "the rights of the party were substantially prejudiced" by the violation.

Standard 2. Definitions

As used in these standards;

- (a) **[Arbitrator and neutral arbitrator]**

1 (1) “Arbitrator” and “neutral arbitrator” mean any arbitrator who is to
2 serve impartially, whether selected or appointed:

3
4 (A) Jointly by the parties or by the arbitrators selected by the
5 parties;

6
7 (B) By the court, when the parties or the arbitrators selected by
8 the parties fail to select an arbitrator who was to be selected
9 jointly by them;

10
11 (C) By a dispute resolution provider organization, under an
12 agreement of the parties or applicable rules ; or

13
14 (D) By any party acting alone, if all parties agree in writing that
15 the unilaterally appointed arbitrator is to serve impartially.

16
17 (2) Where the context includes events or acts occurring before an
18 appointment is final, “arbitrator” and “neutral arbitrator” include a
19 person who has been served with notice of a proposed nomination
20 or appointment.

21
22 (b) “Applicable rules” means the rules of an arbitration association or
23 provider organization that apply in an arbitration pursuant to an
24 agreement between the parties to the arbitration.

25
26 (c) “Applicable law” means constitutional provisions, statutes, decisional
27 law, California Rules of Court, and other statewide rules or regulations
28 that apply to arbitrators who are subject to these standards.

29
30 (d) “Conclusion of the arbitration” means the date on which the arbitrator
31 no longer has any authority to render, modify or correct an award with
32 respect to the matter(s) submitted to arbitration.

33
34 (e) “Consumer arbitration” means an arbitration conducted under a pre-
35 dispute arbitration provision contained in a standardized contract that
36 meets the criteria listed in paragraphs (1) through (3) below. “Consumer
37 arbitration” excludes arbitration proceedings conducted under or arising
38 out of a collective bargaining agreement between employers and
39 employees or between their respective representatives.

40
41 (1) The contract is with a “consumer party.” For purposes of this
42 definition, a “consumer party” is any of the following:
43

- 1 (A) An individual who seeks or acquires any goods or services,
2 including financial services, as defined in section 1761 of the
3 Civil Code, primarily for personal, family, or household
4 purposes;
5
6 (B) An individual who is an enrollee or a subscriber in a health-
7 care service plan within the meaning of section 1345 of the
8 Health and Safety Code;
9
10 (C) An individual with a medical malpractice claim that is subject
11 to arbitration pursuant to a pre-dispute arbitration agreement;
12 or
13
14 (D) An employee in a dispute arising out of or relating to the
15 employee's employment;
16
17 (2) The contract was drafted by or on behalf of the non-consumer
18 party; and
19
20 (3) The consumer party was required to accept the arbitration
21 provision in the contract or forgo the benefits of the contract.
22
23 (f) "Dispute resolution provider organization" and "provider organization"
24 mean any entity that, or individual who, coordinates, administers, or
25 provides arbitration, mediation, or other dispute resolution services or
26 makes referrals to or provides lists of specific arbitrators, mediators or
27 other dispute resolution neutrals. "Provider organization" does not
28 include (1) courts; or (2) individuals or organizations that make referrals
29 to or provide lists of arbitrators in less than five cases per year and do
30 not otherwise coordinate, administer, or provide dispute resolution
31 services.
32
33 (g) "Impartiality" means freedom from favoritism or bias and a
34 commitment to serve all parties equally and fairly.
35
36 (h) "Lawyer in the arbitration" includes any lawyer actually participating in
37 the arbitration. A person who has served as a lawyer for or as an officer
38 of a public agency is deemed to have served as a lawyer in the
39 arbitration if he or she personally advised or in any way represented the
40 public agency concerning the factual or legal issues in the arbitration.
41
42 (i) "Lawyer for a party" includes any lawyer actually representing a party
43 or an officer, a director, or a trustee of a party and any lawyer currently

1 associated in the private practice of law with a lawyer representing a
2 party or an officer, a director, or a trustee of a party.

3
4 **(i)** “Member of the arbitrator’s immediate family” includes the arbitrator’s
5 spouse or domestic partner, as defined in Family Code section 297, and
6 a minor child living in the arbitrator’s household.

7
8 **(k)** “Member of the arbitrator’s extended family” includes the members of
9 the arbitrator’s immediate family and the parents, grandparents, great-
10 grandparents, children, grandchildren, great-grandchildren, siblings,
11 uncles, aunts, nephews, or nieces of the arbitrator or the arbitrator’s
12 spouse or domestic partner or the spouse of such person.

13
14 **(l) [Party]**

15
16 **(1)** “Party” means a party to the arbitration agreement:

17
18 **(A)** Who seeks to arbitrate a controversy pursuant to the
19 agreement;

20
21 **(B)** Against whom such arbitration is sought; or

22
23 **(C)** Who is made a party to such arbitration by order of a court or
24 the arbitrator upon such party’s application, upon the
25 application of any other party to the arbitration, or upon the
26 arbitrator’s own determination.

27
28 **(2)** “Party” includes the representative of a party, unless the context
29 requires a different meaning.

30
31 **(m)** “Party-arbitrator” means an arbitrator selected unilaterally by a party
32 and who is not expected to serve in an impartial manner.

33
34 **(n)** “Private judge” means a neutral person who, by the agreement of the
35 parties, is appointed by the court as either as a temporary judge pursuant
36 to Article VI, Section 21 of the California Constitution, or as a referee
37 pursuant to Code of Civil Procedure section 638 to adjudicate an entire
38 case.

Comment to Standard 2

Subdivision (a). *The definition of “arbitrator” and “neutral arbitrator” in this standard is intended to include all arbitrators who are to serve in a neutral and impartial manner and to exclude unilaterally selected arbitrators who are to serve as advocates or in a partisan role.*

Other terms that may be pertinent to these standards are defined in Code of Civil Procedure section 1280.

Subdivision (g). *The definition of “impartiality” is intended to require freedom from any form of bias in favor of or against any party, including any bias that might arise from the fact that a particular party might select the arbitrator to serve as an arbitrator in additional cases.*

Standard 3. Application

(a) These standards apply to all persons who are nominated or appointed to serve as arbitrators:

(1) Under an arbitration agreement subject to the provisions of title 9 of part III of the Code of Civil Procedure (commencing with section 1280); or

(2) In any arbitration that is to be conducted in California.

(b) These standards do not apply to arbitrators acting in:

(1) An international arbitration proceeding subject to the provisions of title 9.3 of part III of the Code of Civil Procedure;

(2) A judicial arbitration proceeding subject to the provisions of chapter 2.5 of title 3 of part III of the Code of Civil Procedure;

(3) An attorney-client fee arbitration proceeding subject to the provisions article 13 of chapter 4 of division 3 of the Business and Professions Code; or

(4) An arbitration conducted under or arising out of a public or private sector collective bargaining agreement.

Comment to Standard 3

Given the definition of “arbitrator” in standard 1, these standards apply to all arbitrators who meet the criteria of subdivision (a) and who are to serve impartially, even arbitrators appointed by one party unilaterally. Arbitration provider organizations, although not themselves subject to these standards, should be aware of them when performing administrative functions that involve

arbitrators who are subject to these standards. A provider organization's policies and actions should facilitate, not impede, compliance with the standards by arbitrators who are affiliated with the provider organization.

Standard 4. Duration of Duty

Except as otherwise provided in these standards, an arbitrator must comply with these ethics standards from acceptance of appointment until the conclusion of the arbitration.

Standard 5. General Duty

An arbitrator must act in a manner that upholds the integrity and fairness of the arbitration process. He or she must maintain impartiality toward all participants in the arbitration at all times.

Comment to Standard 5

This standard establishes the overarching ethical duty of arbitrators. The remaining standards should be construed as establishing specific requirements that implement this overarching duty in particular situations.

Maintaining impartiality toward all participants during all stages of the arbitration is central to upholding the integrity and fairness of the arbitration. To conduct the arbitration in a fair and evenhanded manner, an arbitrator must guard against statements or other conduct that create an appearance of partiality toward any party. After accepting appointment, an arbitrator should avoid entering into any relationship or acquiring any interest that might reasonably create the appearance of partiality or bias. This includes partiality or bias in favor of a party that might arise from the fact that the party might select the arbitrator to serve as an arbitrator in additional cases.

The arbitrator's overarching duty to uphold the integrity and fairness of the arbitration process includes an obligation to make reasonable efforts to prevent delaying tactics, harassment of any participant, or other abuse of the arbitration process. It is recognized, however, that the arbitrator's reasonable efforts may not successfully control all conduct of the participants.

Standard 6. Duty to Refuse Appointment

(a) Notwithstanding any contrary request, consent, or waiver by the parties, a proposed arbitrator must decline appointment if he or she:

(1) Is not able to be impartial;

(2) Is not fully satisfied that he or she is physically and mentally able to serve; or

1 (3) Is not fully satisfied that he or she can devote the time and
2 attention necessary to commence and complete the arbitration in a
3 timely manner.

4
5 **(b)** A proposed arbitrator may decline to accept an appointment for any
6 reason and may do so without making any disclosures required under
7 standard 7, provided he or she serves notice declining the appointment
8 within the time for disclosure specified in section 1281.9(b) of the Code
9 of Civil Procedure.

10
11 **Standard 7. Disclosure**

12
13 **(a)** This standard is intended to identify the matters that must be disclosed
14 by a person nominated or appointed as a neutral arbitrator. To the extent
15 that this standard addresses matters that are also addressed by statute, it
16 is intended to include those statutory disclosure requirements, not to
17 eliminate, reduce, or otherwise limit them.

18
19 **(b)** A person who is nominated or appointed as a neutral arbitrator must
20 make a reasonable effort to inform himself or herself of any matters that
21 could cause a person aware of the facts to reasonably entertain a doubt
22 that the proposed neutral arbitrator would be able to be impartial and
23 must disclose all such matters to the parties. Matters that must be
24 disclosed include, but are not limited to:

25
26 **(1)** Any significant past, present, or currently expected personal
27 relationship or affiliation between the arbitrator or a member of the
28 arbitrator's family and any party or lawyer in the arbitration,
29 including:

30
31 **(A)** The arbitrator or a member of the arbitrator's extended family is
32 a party, a party's spouse or domestic partner, or an officer,
33 director, or trustee of a party. Except with regard to members of
34 the arbitrator's immediate family, an arbitrator will be deemed to
35 have complied with this requirement if the arbitrator has made a
36 reasonable effort to inform himself or herself about these
37 relationships and has disclosed all the information pertaining to
38 these relationships within his or her knowledge or possession.

39
40 **(B)** The arbitrator or a member of the arbitrator's extended family is:

41
42 **(i)** A lawyer in the arbitration;
43

- 1 (ii) The spouse or domestic partner of a lawyer in the
2 arbitration; or
3
4 (iii) Currently associated in the private practice of law with a
5 lawyer in the arbitration.
6

7 Except with regard to members of the arbitrator's immediate
8 family, an arbitrator will be deemed to have complied with this
9 requirement if the arbitrator has made a reasonable effort to
10 inform himself or herself about these relationships and has
11 disclosed all the information pertaining to these relationships
12 within his or her knowledge or possession.
13

- 14 (C) The arbitrator or a member of the arbitrator's immediate family
15 is a close personal friend of a party, a party's spouse or domestic
16 partner, an officer, a director, or a trustee of a party, or a lawyer
17 in the arbitration.
18

- 19 (2) Any past, present, or currently expected service as a dispute
20 resolution neutral for a party or a lawyer for a party, including:
21

- 22 (A) The arbitrator is serving or, within the preceding five years, has
23 served:
24

- 25 (i) As a neutral arbitrator in another arbitration involving a
26 party to the current arbitration or a lawyer for a party;
27
28 (ii) As a party-appointed arbitrator in another arbitration for
29 either a party to the current arbitration or a lawyer for a
30 party; or
31
32 (iii) As a neutral arbitrator in another arbitration in which he
33 or she was selected by a person serving as a party-
34 appointed arbitrator in the current arbitration.
35

36 If the arbitrator is serving or has served in any such capacity in
37 another arbitration, he or she must disclose the information
38 required by Code of Civil Procedure section 1281.9(a)(3) or (4)
39 and provide a summary of that information that includes the total
40 number of cases in which the arbitrator served in each such
41 capacity and the number and percentage of cases in which the
42 party to the current arbitration or the party represented by the

1 lawyer for a party in the current arbitration was the prevailing
2 party.

3
4 (B) The arbitrator is serving or, within the preceding two years, has
5 served as a private judge, referee, mediator, settlement facilitator,
6 or other alternative dispute resolution neutral in another case
7 involving a party to the current arbitration or a lawyer for a party.
8 If the arbitrator is serving or has served in such a capacity, he or
9 she must disclose the names of the parties in the pending or prior
10 matters. The arbitrator must also disclose the results of each case
11 in which the arbitrator rendered a decision as a private judge or
12 referee, including the date of the decision, identification of the
13 prevailing party, the names of the parties' attorneys and the
14 amount of monetary damages awarded, if any. In all of these
15 matters, in order to preserve confidentiality, it is sufficient to
16 give the name of any party who is not a party to the pending
17 arbitration as "claimant" or "respondent" if the party is an
18 individual and not a business or corporate entity. The arbitrator
19 must also provide a summary that includes the total number of
20 cases in which the arbitrator served in each such capacity and the
21 number and percentage of cases in which the arbitrator rendered
22 a decision as a private judge or referee in which the party to the
23 current arbitration or the party represented by the lawyer for the
24 party in the current arbitration was the prevailing party.

25
26 An arbitrator will be deemed to have complied with this
27 requirement with respect to any such services commenced prior
28 to July 1, 2002, if the arbitrator declares in writing that he or she
29 has disclosed all required information pertaining to those services
30 within his or her knowledge or possession and has made a good-
31 faith effort to obtain the required information from any dispute
32 resolution provider organization administering those prior
33 services.

34
35 (3) Any past, present, or currently expected attorney-client
36 relationship between the arbitrator and a party or lawyer for a
37 party, including:

38
39 (A) A party or an officer, a director, or a trustee of a party is, or,
40 within the preceding two years, was a client of the arbitrator in
41 the arbitrator's private practice of law or a client of a lawyer with
42 whom the arbitrator is currently or was at the time of the
43 representation associated in the private practice of law;

- 1
- 2 (B) A lawyer in the arbitration is, or, within the preceding two years,
- 3 was a client of the arbitrator in the arbitrator's private practice of
- 4 law or a client of a lawyer with whom the arbitrator is currently
- 5 or was at the time of the representation associated in the private
- 6 practice of law;
- 7
- 8 (C) The arbitrator gave advice to a party or a lawyer in the arbitration
- 9 concerning any matter involved in the arbitration.
- 10
- 11 (4) Any other past, present, or currently expected professional or
- 12 financial relationship or affiliation between the arbitrator or a
- 13 member of the arbitrator's family and any party or lawyer in the
- 14 arbitration, including:
- 15
- 16 (A) The arbitrator or a member of the arbitrator's immediate family
- 17 has a financial interest in a party;
- 18
- 19 (B) The arbitrator or a member of the arbitrator's immediate family
- 20 is or, within the preceding two years, was an employee of or an
- 21 expert witness or a consultant for a party;
- 22
- 23 (C) The arbitrator or a member of the arbitrator's immediate family
- 24 is or, within the preceding two years, was an employee of or an
- 25 expert witness or a consultant for a lawyer in the arbitration; or
- 26
- 27 (D) A lawyer in the arbitration is, or, within the preceding two years,
- 28 was associated in the private practice of law with the arbitrator.
- 29
- 30 (5) Any significant relationship between the arbitrator or a member of
- 31 the arbitrator's family and the dispute being arbitrated, including:
- 32
- 33 (A) The arbitrator or a member of the arbitrator's immediate family
- 34 has a financial interest in the subject matter of the arbitration;
- 35
- 36 (B) The arbitrator or a member of the arbitrator's immediate family
- 37 has an interest that could be substantially affected by the
- 38 outcome of the arbitration; or
- 39
- 40 (C) The arbitrator or a member of the arbitrator's extended family
- 41 has personal knowledge of disputed evidentiary facts relevant to
- 42 the arbitration. A person who is likely to be a material witness in
- 43 the proceeding is deemed to have personal knowledge of

1 disputed evidentiary facts concerning the proceeding. Except
2 with regard to members of the arbitrator's immediate family, an
3 arbitrator will be deemed to have complied with this requirement
4 if the arbitrator has made a reasonable effort to inform himself or
5 herself about these relationships and he or she has disclosed all
6 the information pertaining to these relationships within his or her
7 knowledge or possession.
8

9 (6) In a consumer arbitration as defined in standard 2, the nature of the
10 relationship between the arbitrator and the dispute resolution
11 provider organization that referred this case to the arbitrator or that
12 is coordinating, administering, or providing the services of the
13 arbitrator in this case and any significant past, present, or currently
14 expected financial or professional relationship or affiliation
15 between that dispute resolution provider organization and a party
16 or lawyer in the arbitration, including:
17

18 (A) Any financial interest the arbitrator has in the provider
19 organization other than an interest in receiving referrals of cases;
20

21 (B) The role the provider organization plays in the identification,
22 recommendation, or selection of the arbitrators for cases;
23

24 (C) The provider organization has a financial interest in a party;
25

26 (D) A party, a lawyer in the arbitration, or a law firm with which a
27 lawyer in the arbitration is currently affiliated is a member of or
28 has a financial interest in the provider organization;
29

30 (E) Within the preceding two years the provider organization has
31 received a gift, bequest, or favor from a party, a lawyer in the
32 arbitration, or a law firm with which a lawyer in the arbitration is
33 currently affiliated;
34

35 (F) In any other case involving a party, a lawyer in the current
36 arbitration, or a lawyer currently associated in the private
37 practice of law with a lawyer in the arbitration, the provider
38 organization:
39

40 (i) is coordinating, administering, or providing, or, within
41 the preceding two years, has coordinated, administered,
42 or provided arbitration, mediation, or other dispute
43 resolution services; or

1
2 (ii) is providing lists of or making referrals to, or within the
3 preceding two years, has provided lists of or made
4 referrals to specific arbitrators, mediators, or other
5 dispute resolution neutrals.
6

7 If the provider organization is acting or has acted in any of these
8 capacities, the arbitrator must disclose the names of the parties in
9 the pending or prior matters. The arbitrator must also disclose the
10 results of each such case in which a neutral affiliated with the
11 provider organization rendered a decision as an arbitrator, a
12 private judge, or a referee, including the date of the decision,
13 identification of the prevailing party, the names of the parties'
14 attorneys, and the amount of monetary damages awarded, if any.
15 In all of these matters, in order to preserve confidentiality, it is
16 sufficient to give the name of any party who is not a party to the
17 pending arbitration as "claimant" or "respondent" if the party is
18 an individual and not a business or corporate entity. The
19 arbitrator must also provide a summary that includes the total
20 number of cases in which the provider organization served in
21 each such capacity and the number and percentage of cases in
22 which a neutral affiliated with the provider organization rendered
23 a decision as an arbitrator, a private judge, or a referee in which
24 the party to the current arbitration or the party represented by the
25 lawyer in the current arbitration was the prevailing party.
26

27 (G) The provider organization has entered into, or currently expects
28 to enter into, an agreement with any party or lawyer in the
29 current arbitration or a law firm with which a lawyer in the
30 current arbitration is currently affiliated to provide or administer
31 dispute resolution services in an ongoing stream of other matters
32 or to provide other consulting services for that party, lawyer, or
33 law firm.
34

35 Until January 1, 2004, an arbitrator will be deemed to have
36 complied with the requirements of subdivision (b)(6) of this
37 standard if the arbitrator declares in writing that he or she has
38 disclosed all required information within his or her knowledge or
39 possession pertaining to the relationships between the provider
40 organization and the parties and lawyers in the arbitration and
41 has made a good-faith effort to obtain the required information
42 from the dispute resolution provider organization.
43

1 (7) The arbitrator's membership in any organization that practices
2 invidious discrimination on the basis of race, sex, religion, national
3 origin, or sexual orientation. Membership in a religious
4 organization, an official military organization of the United States,
5 or a nonprofit youth organization need not be disclosed unless it
6 would interfere with the arbitrator's proper conduct of the
7 proceeding or would cause a person aware of the fact to reasonably
8 entertain a doubt concerning the arbitrator's ability to act
9 impartially.

10
11 (8) Any other matter that:

12
13 (A) Might cause a person aware of the facts to reasonably entertain a
14 doubt that the arbitrator would be able to be impartial;

15
16 (B) Leads the proposed arbitrator to believe there is a substantial
17 doubt as to his or her capacity to be impartial, including, but not
18 limited, to bias or prejudice toward a party, lawyer, or law firm
19 in the arbitration; or

20
21 (C) Otherwise leads the arbitrator to believe that his or her
22 disqualification will further the interests of justice.

23
24 (c) For purposes of this standard:

25
26 (1) "Prior cases" means noncollective bargaining cases in which an
27 arbitration award was rendered within five years prior to the date
28 of the proposed nomination or appointment. The term "any
29 arbitration" does not include an arbitration conducted under or
30 arising out of collective bargaining agreement between employers
31 and employees or between their respective representatives.

32
33 (2) In any references to relationships or affiliations with, or services
34 for, a party, "party" includes any entity that is affiliated with a
35 party as defined in standard 2 and that is involved in the
36 transaction, contract, or facts out of which the dispute subject to
37 arbitration has arisen.

38
39 (3) If an arbitrator has informed the parties in a pending arbitration
40 about an offer from a party or lawyer for a party in that arbitration
41 for employment or a professional relationship and has sought the
42 parties consent to that employment or professional relationship as
43 required by subdivision (d) of standard 10, the arbitrator is not also

1 required to disclose that offer of employment as a currently
2 expected financial or professional relationship or affiliation under
3 this standard.
4

5 (d) An arbitrator’s duty to inform himself or herself of and to disclose the
6 matters described in subdivision (b) of this standard, except those
7 matters described in subdivision (b)(6) of this standard, is a continuing
8 duty, applying from service of the notice of the arbitrator’s proposed
9 nomination or appointment until the conclusion of the arbitration
10 proceeding. With regard to matters enumerated in subdivision (b)(6) of
11 this standard, after making a reasonable effort to inform himself or
12 herself of these matters and making the initial disclosure required by
13 subdivision (f) of this standard, an arbitrator does not have a continuing
14 duty to inform himself or herself of or to disclose these matters.
15

16 (e) If the arbitrator concludes that he or she is not physically or mentally
17 able or not otherwise competent to conduct the arbitration or decide the
18 matter or is unable to do so because of a disability or because he or she
19 cannot devote sufficient time or attention to the matter, he or she must
20 disclose that conclusion to the parties.
21

22 (f) Within the time specified in Code of Civil Procedure section 1281.9(b),
23 a proposed neutral arbitrator must disclose all matters in subdivision (b)
24 of this standard of which the arbitrator is then aware. If an arbitrator
25 subsequently becomes aware of a matter that must be disclosed under
26 either subdivision (b) or (e) of this standard, the arbitrator must disclose
27 that matter to the parties as soon as practicable, but in no event more
28 than 10 calendar days after the arbitrator becomes aware of the matter.
29

30 **Comment to Standard 7**

31
32 *Timely disclosure to the parties is the primary means of ensuring the arbitrator’s impartiality . It*
33 *provides the parties with the necessary information to make an informed selection of a neutral*
34 *arbitrator by disqualifying or ratifying the proposed arbitrator following disclosure. See also*
35 *standard 10, concerning disclosure and disqualification requirements relating to concurrent and*
36 *subsequent employment or professional relationships between an arbitrator and a party or*
37 *attorney in the arbitration. A failure to comply with disclosure obligations, in and of itself, is a*
38 *ground for disqualification of the arbitrator or vacatur of the arbitrator’s award (see Code Civ.*
39 *Proc., §§ 1281.91(a), 1281.95(b), and 1286.2(a)(6)(A)).*
40

41 *Code of Civil Procedure section 1281.85 specifically requires that the ethical standards adopted*
42 *by the Judicial Council address the disclosure of interests, relationships, or affiliations that may*
43 *constitute conflicts of interest, including prior service as an arbitrator or other dispute resolution*
44 *neutral entity. Section 1281.85 further provides that the standards “shall be consistent with the*
45 *standards established for arbitrators in the judicial arbitration program and may expand but may*

1 not limit the disclosure and disqualification requirements established by this chapter [Chapter 2
2 of Title 9 of Part III of the Code Civil Procedure, §§ 1281-1281.95]”.
3

4 Code of Civil Procedure section 1281.9 already establishes detailed requirements concerning
5 disclosures by arbitrators, including a specific requirement that arbitrators disclose the existence
6 of any ground specified in Code of Civil Procedure section 170.1 for disqualification of a judge.
7 This standard does not eliminate or otherwise limit those requirements; in large part, it simply
8 consolidates and integrates those existing statutory disclosure requirements by topic area. This
9 standard does, however, expand upon or clarify the existing statutory disclosure requirements in
10 the following ways:

- 11
- 12 • Expanding the existing duty of reasonable inquiry that applies only with respect to financial
13 interests under Code of Civil Procedure section 170.1(a)(3), to require arbitrators to make a
14 reasonable effort to inform themselves about all matters that must be disclosed (subdivision
15 (b)).
- 16
- 17 • Expanding required disclosures about the relationships or affiliations of an arbitrator’s
18 family members to include those of an arbitrator’s domestic partner (subdivision (b)(1); see
19 also definitions of immediate and extended family in standard 2).
- 20
- 21 • Adding a specific obligation to disclose not only familial relationships, but also close
22 personal friendships with a party or attorney in the arbitration (subdivision (b)(1)(C)).
- 23
- 24 • Requiring arbitrators, in addition to making statutorily required disclosures regarding prior
25 service as an arbitrator for a party or attorney for a party, to disclose prior services both as
26 neutral arbitrator selected by a party arbitrator in the current arbitration and as any other
27 type of dispute resolution neutral for a party or attorney for a party (e.g. private judge,
28 mediator or referee) (subdivision (b)(2)(B)).
- 29
- 30 • In consumer arbitrations, requiring arbitrators to disclose the nature of their relationship
31 with the dispute resolution provider organization that referred the case to the arbitrator or
32 that is administering the arbitration and any financial or professional relationship between
33 the provider organization and any party, attorney, or law firm in the arbitration (subdivision
34 (b)(6)).
- 35
- 36 • Requiring arbitrators to disclose membership in any organization that practices invidious
37 discrimination on the basis of race, sex, religion, national origin, or sexual orientation
38 (subdivision (b)(7)).
- 39
- 40 • Clarifying that the duty to disclose matters affecting impartiality is a continuing obligation,
41 requiring disclosure of matters that were not known at the time of nomination or appointment
42 but which become known afterwards (subdivision (d)).
- 43
- 44 • Requiring the arbitrator to disclose to the parties if he or she concludes that he or she is not
45 physically or mentally able or not otherwise competent to conduct the arbitration or decide
46 the matter or is unable to do so because of a disability or because he or she cannot devote
47 sufficient time or attention to the matter (subdivision (e)).
48

- 1 • Requiring arbitrators to disclose to the parties as soon as practicable after its discovery any
2 matter about which they become aware after the time for making an initial disclosure has
3 expired, but in no event more than 10 calendar days after the arbitrator becomes aware of
4 the matter (subdivision (f)).

5
6 The overarching duty set forth in this standard, which mirrors the duty set forth in Code of Civil
7 Procedure section 1281.9, is to inform parties about matters that could cause a person aware of
8 the facts to reasonably entertain a doubt that the proposed neutral arbitrator would be able to be
9 impartial. While the remaining subparagraphs require the disclosure of specific interests,
10 relationships, or affiliations, these are only examples of common matters that could cause a
11 person aware of the facts to reasonably entertain a doubt that the arbitrator would be able to be
12 impartial. The absence of particular interests, relationships, affiliations listed in the
13 subparagraphs does not necessarily mean that there is no matter that could reasonably raise a
14 question about the arbitrator's ability be impartial and that therefore must be disclosed. An
15 arbitrator must make determinations concerning disclosure on a case-by-case basis, applying the
16 general criteria for disclosure under paragraph (b).

17
18 It is good practice for an arbitrator to ask each participant to make an effort to disclose any
19 matters that may affect the arbitrator's ability to be impartial.

20
21 Subdivisions (b)(1), (2), (3), (4) and (6). The term "currently expected" includes all relationships
22 or affiliations which the arbitrator, at the time the disclosure is made, expects will be formed. For
23 example, if the arbitrator has agreed in concept to enter into a business relationship with a party,
24 but they have not yet signed a written agreement formalizing that relationship, this would be a
25 "currently expected" relationship which the arbitrator would be required to disclose.

26
27 Subdivision (c)(2). The term "party" does not automatically include a parent, subsidiary or other
28 affiliate of a party that is a corporation or other entity unless such an affiliate is necessary to the
29 arbitration or involved in the transaction, contract, or facts out of which the dispute subject to
30 arbitration arose.

31 32 **Standard 8. Disqualification**

33
34 **(a) An arbitrator is disqualified if:**

- 35
36 **(1) The arbitrator fails to make a required disclosure within the time**
37 **specified in Code of Civil Procedure section 1281.9(b) and a party**
38 **serves a notice of disqualification in the manner and within the**
39 **time specified in Code of Civil Procedure section 1281.91(a);**
40
41 **(2) The arbitrator makes a required disclosure within the time**
42 **specified in Code of Civil Procedure section 1281.9(b) and, based**
43 **on that disclosure, a party serves a notice of disqualification in the**
44 **manner and within the time specified in Code of Civil Procedure**
45 **section 1281.91(b);**
46

- (3) After the time specified in Code of Civil Procedure section 1281.9(b), an arbitrator makes a required disclosure of a matter and, based on that disclosure, a party serves a notice of disqualification in the manner and within the time specified in Code of Civil Procedure section 1281.91(b) but before the conclusion of the arbitration; or
- (4) At any time before the conclusion of the arbitration, a party becomes aware that an arbitrator has made a material omission or material misrepresentation in his or her disclosure and, within 15 days after becoming aware of the omission or misrepresentation but before the conclusion of the arbitration, the party serves a notice of disqualification in the manner specified in Code of Civil Procedure section 1281.91(b).
- (b) For purposes of this standard, “required disclosure” means a disclosure required under standard 7 or Code of Civil Procedure section 1281.9.
- (c) Notwithstanding any contrary request, consent, or waiver by the parties, an arbitrator must disqualify himself or herself if he or she concludes at any time during the arbitration that he or she is not able to conduct the arbitration impartially.

Comment to Standard 8

Code of Civil Procedure section 1281.91 already establishes requirements concerning disqualification of arbitrators. This standard does not eliminate or otherwise limit those requirements or change existing authority or procedures for challenging an arbitrator’s failure to disqualify himself or herself. The provisions of subdivisions (a)(1) and (2) restate existing disqualification procedures under section 1281.91(a) and (b) when an arbitrator makes, or fails to make, initial disclosures. The provisions of subdivision (a)(3) and (4) clarify the requirements relating to disqualification based on disclosure made by the neutral arbitrator after appointment or based on the discovery by the party of a material omission or misrepresentation in the arbitrator’s disclosure.

Standard 9. Duty to Refuse Gift, Bequest, or Favor

- (a) An arbitrator must not, under any circumstances, accept a gift, bequest, favor, or honoraria from a party or any other person or entity having an interest in the arbitration. This standard does not prohibit an arbitrator from demanding or receiving a fee for services or expenses.
- (b) An arbitrator must discourage members of his or her immediate family and other family members residing in his or her household from

1 accepting a gift, bequest, favor, or honoraria from a party or any other
2 person or entity having an interest in the arbitration.

3
4 (c) This standard applies from service of notice of appointment or
5 appointment until two years after the conclusion of the arbitration.

6
7 (d) For purposes of this standard, “gift” means a gift as defined in Code of
8 Civil Procedure section 170.9(l) and “honoraria” means honoraria as
9 defined in Code of Civil Procedure section 170.9(h) and (i).

10
11 **Standard 10. Duty to Refuse Future Professional Relationship or**
12 **Employment**

13
14 (a) From the time of appointment until the conclusion of the arbitration, an
15 arbitrator must not entertain or accept any offers of employment or new
16 professional relationships as a lawyer, an expert witness, or a consultant
17 from a party or a lawyer for a party in the pending arbitration.

18
19 (b) In addition to the disclosures required by standard 7, within the time
20 specified in subdivision (b) of Code of Civil Procedure section 1281.9, a
21 proposed arbitrator must disclose whether or not he or she will entertain
22 offers of employment or new professional relationships in any capacity
23 other than as a lawyer, expert witness or consultant, from a party or a
24 lawyer for a party in the arbitration while that arbitration is pending,
25 including offers to serve as an arbitrator, mediator, or other dispute
26 resolution neutral in another case. A party may disqualify the arbitrator
27 based on this disclosure by serving a notice of disqualification in the
28 manner and within the time specified in Code of Civil Procedure section
29 1281.91(b).

30
31 (c) If an arbitrator fails to make the disclosure required by subdivision (b)
32 of this standard or if, in the disclosure made pursuant to subdivision (b),
33 the arbitrator states that he or she will not entertain offers of
34 employment or new professional relationships from a party or a lawyer
35 for a party in the arbitration while that arbitration is pending, from the
36 time of appointment until the conclusion of the arbitration, the arbitrator
37 must not entertain or accept any such offers, including offers to serve as
38 an arbitrator, mediator, or other dispute resolution neutral.

39
40 (d) If in the disclosure made pursuant to subdivision (b), the arbitrator states
41 that he or she will entertain offers of employment or new professional
42 relationships from a party or a lawyer for a party in the arbitration while
43 that arbitration is pending, the arbitrator may entertain, but, from the

1 time of appointment until the conclusion of the arbitration, must not
2 accept any such offers of employment or professional relationships,
3 including as a mediator, an arbitrator, or another dispute resolution
4 neutral, without the informed consent of all parties to the current
5 arbitration. If an arbitrator has informed the parties in a pending
6 arbitration about an offer from a party or lawyer for a party for
7 employment or a professional relationship and has sought the parties'
8 consent to that employment or professional relationship as required by
9 this subdivision, the arbitrator is not also required to disclose that offer
10 of employment as a currently expected financial or professional
11 relationship or affiliation under standard 7.

12
13 **(e)** An arbitrator must not at any time:

14
15 (1) Enter into any professional relationship or accept any professional
16 employment, including representation as a lawyer, relating to the
17 matter arbitrated without the informed written consent of all
18 parties; or

19
20 (2) Enter into any professional relationship or accept employment in
21 another matter in which information that he or she has received in
22 confidence from a party by reason of serving as an arbitrator in a
23 matter is material without the informed written consent of the
24 party.

25
26 **Standard 11. Conduct of Proceeding**

27
28 **(a)** An arbitrator must conduct the arbitration fairly, promptly, and
29 diligently.

30
31 **(b)** Diligence requires expeditious management of all stages of the
32 proceeding and concluding the case as promptly as the circumstances
33 reasonably permit.

34
35 **(c)** An arbitrator must conduct the arbitration in a procedurally fair manner
36 and in accordance with the applicable law relating to the conduct of
37 arbitration proceedings.

38
39 **(d)** An arbitrator must decide, justly and after careful deliberation, all the
40 matters submitted for determination. In making the decision, an
41 arbitrator must exercise independent judgment and must not permit
42 outside pressure to affect the decision.
43

1 **Comment to Standard 11**

2
3 ***Subdivision (a).** The arbitrator’s duty to dispose of matters promptly and diligently must not take*
4 *precedence over the arbitrator’s duty to dispose of matters fairly.*

5
6 ***Subdivision (c).** “Procedural fairness” means a balanced process in which each party is given*
7 *an opportunity to participate. When one but not all parties are unrepresented, an arbitrator must*
8 *ensure that the party appearing without counsel has an adequate opportunity to be heard and*
9 *involved.*

10
11 ***Subdivision (c).** See Chapter 3 of Title 9 of Part III of the Code Civil Procedure, §§ 1282-1284.2,*
12 *relating to the conduct of arbitration proceedings. See also Code of Civil Procedure section*
13 *1286.2 concerning arbitrator’s unreasonable refusal to grant a continuance as grounds for*
14 *vacatur of the award.*

15
16 ***Subdivision (d).** An arbitrator’s duty to exercise independent judgment precludes him or her from*
17 *delegating any decision-making power. As provided in standard 12, however, an arbitrator may*
18 *obtain help from an expert.*

19
20 **Standard 12. Ex Parte Communications**

21
22 ***(a)** An arbitrator must not initiate, permit, or consider any ex parte*
23 *communications, or consider other communications made to the*
24 *arbitrator outside the presence of all of the parties concerning a pending*
25 *or impending arbitration, except as permitted by this standard, by*
26 *agreement of the parties, or by applicable law.*

27
28 ***(b)** An arbitrator may communicate with a party in the absence of other*
29 *parties about administrative matters, such as setting the time and place*
30 *of hearings or making other arrangements for the conduct of the*
31 *proceedings, as long as the arbitrator reasonably believes that the*
32 *communication will not result in a procedural or tactical advantage for*
33 *any party. When such a discussion occurs, the arbitrator must promptly*
34 *inform the other parties of the communication and must give the other*
35 *parties an opportunity to respond before making any final determination*
36 *concerning the matter discussed.*

37
38 ***(c)** An arbitrator may obtain the advice of a disinterested expert on the*
39 *subject matter of the arbitration if the arbitrator notifies the parties of*
40 *the person consulted and the substance of the advice and affords the*
41 *parties a reasonable opportunity to respond.*

1
2 **Comment to Standard 12**

3
4 *See also Code of Civil Procedure sections 1282.2(e) regarding the arbitrator's authority to hear*
5 *a matter when a party fails to appear and 1282.2(g) regarding the procedures that must be*
6 *followed if an arbitrator intends to base an award on information not obtained at the hearing.*
7

8 **Standard 13. Confidentiality**

- 9
10 (a) An arbitrator must not, at any time, use or disclose information that he
11 or she received in confidence by reason of serving as an arbitrator in a
12 matter to gain personal advantage.
13
14 (b) A neutral arbitrator must not inform anyone of the award in advance of
15 the time that the award is given to all parties.
16

17 **Standard 14. Compensation**

- 18
19 (a) An arbitrator must not charge any fee for services or expenses that is in
20 any way contingent on the result or outcome of the arbitration.
21
22 (b) Before accepting appointment, an arbitrator, a dispute resolution
23 provider organization, or another person or entity acting on the
24 arbitrator's behalf must inform all parties in writing of the terms and
25 conditions of the arbitrator's compensation. This information must
26 include any basis to be used in determining fees and any special fees for
27 cancellation, research and preparation time, or other purposes.
28

29 **Standard 15. Marketing**

- 30
31 (a) An arbitrator must be truthful and accurate in marketing his or her
32 services and must not make any representation that directly or indirectly
33 implies favoritism or a specific outcome.
34
35 (b) An arbitrator must not solicit business from a participant in the
36 arbitration while the arbitration is pending.
37

38 **Comment to Standard 15**

39
40 *Subdivision (a). An arbitrator must ensure that not only his or her personal marketing activities,*
41 *but also any activities carried out on his or her behalf, comply with standard 14.*
42

43 *Subdivision (b). This provision is not intended to prohibit an arbitrator from accepting another*
44 *arbitration from a party or attorney in the arbitration while the first matter is pending, as long as*

- 1 *the arbitrator complies with the provisions of standard 10 and there was no express solicitation*
- 2 *of this business by the arbitrator.*

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